IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 220/2007

SURAJ SHARMA & ORS. Vs. SMT. SARITA SHARMA

DATE: 11.04.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. A.K. Gupta for the petitioners.
Mr. Ram Rakh Sharma for the complainant/respondent.

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R E P O R T A B L E

The instant criminal revision petition under Section 397 and 401 Cr.P.C. is preferred by the petitioners against the order dated 19.02.2007 passed by the Sessions Judge, Jaipur District, Jaipur in Criminal Appeal No. 03/2007 dismissing the appeal on the ground that no appeal lies which was filed against the order dated 19.01.2007 passed by the Additional Civil Judge (Jr. Division) & Judicial Magistrate First Class No.5, Jaipur District, Jaipur in Complaint Case No. 3/2007 as the order dated 19.01.2007 is an interlocutory order.

Learned counsel for the petitioners referred Section 29 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act of 2005'), which reads as under:-

> **"29. Appeal.-** There shall lie an appeal to the Court of Sessions within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later."

The learned District & Sessions Judge has observed that the impugned order dated 19.01.2007 is an interlocutory order by which interim direction has been issued, therefore, appeal before the Sessions Judge against the impugned order dated 19.01.2007 is not maintainable.

To decide this controversy, meaning of 'order' is to be seen. As per the legal glossary, 'order' means an authoritative direction, injunction, mandate; a decision of a court or judge made or entered in writing.

Thus, even interim order or interlocutory order amounts to order and as per Section 29 of the Act of 2005, every order made by the Magistrate is appealable and the similar analogy has been drawn in the Hindu Marriage Act, 1955, wherein in Section 28 it is made clear that Appeals from decrees and orders.

Here in Section 29 of the Act of 2005, the Legislature has specifically mentioned that appeal lies against the order.

Thus, the appeal before the District & Sessions Judge against an interlocutory order passed by the Magistrate, is maintainable and the learned District & Sessions Judge, Jaipur District, Jaipur has not rightly appreciated Section 29 of the Act of 2005 and dismissed the appeal only on the count that the appeal is not maintainable, which is per se illegal and contrary to law.

Therefore, the order dated 19.02.2007 passed by the District & Sessions Judge, Jaipur District, Jaipur deserves to be quashed and set-aside and the same is hereby quashed and set-aside and the matter is remanded back to the District & Sessions Judge, Jaipur District, Jaipur for fresh adjudication of the appeal on its merit.

With these observations, the revision petition stands disposed of.

(K.S. RATHORE),J.

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